

SYLLABUS

HEALTH LAW AND POLICY

Mr. Bierig

The principal text for this course will be Rosenbaum and Frankford, Law and the American Health Care System, Foundation Press (2d Ed. 2012). Unless otherwise noted, all pages listed herein refer to the principal text. In each week, there will also be supplemental reading as indicated in this syllabus.

Part I – Public Financing of Health Care

Week 1

- Class 1.
- a. Background (no reading)
 - b. Introduction to Medicare, pp. 450-460
- Class 2.
- Basic Payment Issues Under Medicare
- a. Payments to Hospitals, pp. 591-606 (at n. 4)
 - b. Payments to Physicians, pp. 613-623
 - c. Medicare Managed Care, (no reading)
 - d. Payments for Pharmaceuticals
pp. 460-462 (at Fd.); “Medicare Pays More For Medications Under Part D Plans” (CCH Medicare and Medicaid Guide, Aug. 5, 2008)

Week 2

- Class 1.
- Care for the Poor and Uninsured
- a. Basic Issues, pp. 499-509
 - b. Medicaid Reform, Final Report and Recommendations, Medicaid Commission (Executive Summary) (Dec. 29, 2006)
 - c. Waiver Programs, pp. 356-358 (at ¶d)
 - d. Medicaid and the American with Disabilities Act, pp. 552-567
- Class 2.
- Coverage Issues Under Medicare and Medicaid
- a. Covered Providers
Warr v. Horsley, 705 F.Supp. 540 (N.D. Ala. 1989)
Chisholm v. Hood, 133 F.Supp, 2d 894 (E.D. La. 2001)

- b. Covered Services
Weaver v. Reagen, 886 F.2d 194 (8th Cir. 1989)
Smith v. Rasmussen, 249 F.3d 755 (8th Cir. 2001)
- c. Jurisdictional Issues and Medicare
pp. 465-480, 483 (at n. 3) – 485

Week 3

Class 1. Private Remedies Against State Underfunding

- a. The Boren Amendment and Equal Access Provisions (no reading)
- b. Issues of Standing
Arkansas Medical Society v. Reynolds, 6 F.3d 519 (8th Cir. 1993)
pp. 537
Armstrong v. Exceptional Child Center, 135 S.Ct. 1378 (2015)
- c. Issues of Proof
Methodist Hospitals v. Sullivan, 91 F.3d 1026 (7th Cir. 1996)

Class 2. Other Federal Regulation of Health Care

- a. HIPAA Privacy Regulations, pp. 762-769
Byrne v. Avery Center, 102 A.3d 32
- b. EMTALA, pp. 52 (at first full paragraph) – 59, 66-70; Morales v. Sociedad Espanola, 524 F.3d 54 (1st Cir., 2008); pp. 80-87; summary of R. Epstein critique of EMTALA

Week 4

Class 1. Regulation of Billing Practices

- a. General Agency Oversight, pp. 907 (at bottom) – 911; Greene v. Bowen, 639 F.Supp 554 (E.D. Cal. 1986)
- b. False Claims Act, pp. 1113 (at bottom) – 1116; 1129-1142; 1150 (at n. 7) – 1154 (at n. 10) Universal Health Services v. U.S. ex. rel. Escobar, 579 U.S. ___ (June 16, 2016)

Class 2. Anti-Kickback and Related Laws

- a. Anti-Kickback Rules, pp. 1161-1172 (at top); Medical Dev. Network v. Professional Respiratory Care, 673 So. 2d 565 (Fla. App. 1996); Hanlester Network v. Shalala, 51 F.3d 1390 (9th Cir. 1995)
- b. Self-Referral Rules, pp. 1183 (at Stark)-1192; How Medicare Self-Referral Thrives on Loophole (Wall Street Journal, Oct. 22, 2014)

Week 5

Class 1. Introduction to the Affordable Care Act

- a. Gawande, Annals of Medicine: “The Cost Conundrum – What A Texas Town Can Teach Us About Health Care” (The New Yorker, June 2009)
- b. Natl. Fed. Of Ind. Bus. v. Sebelius, 132 S. Ct. 2566 (2012)
- c. Medicare Fact Sheets (CMS, March 31, 2011) – Summary of proposed rule provisions for ACOs under the Medicare Shared Savings Program; Improving Quality of Care for Medicare Patients: ACOs; Federal agencies address legal issues regarding ACOs

Class 2. Implementation of the ACA

- a. Establishment of Insurance Exchanges, King v. Burwell, 135 S.Ct. 2480 (2015)
- b. Moda Health Plan Inc v. U.S., ___ F.3d ___ (Fed. Cir. June 14, 2018)
- c. Medicaid Expansion (no reading)
- d. Religious Objections, Burwell v. Hobby Lobby Stores, 134 S.Ct. 2751 (2014)
- e. Is the Affordable Care Act Working? (N.Y. Times, Oct. 26, 2014)
- f. “These Americans Hated the Health Law” (New York Times, July 20, 2017)

Part II – Managed Care

Week 6

Class 1. Introduction to Managed Care; Relationship between Patients and MCOs

- a. Types of Managed Care Plans (no reading)
- b. What is Managed in Managed Care? pp. 894-905
- c. Harvard Ideas on Health Care Hit Home, Hard (N.Y. Times, Jan. 5, 2015)
- d. Relations with Physicians, pp. 919-927

Class 2. Litigation Against Managed Care Organizations Under State Law

- a. Vicarious Liability of MCOs, Petrovich v. Share Health Plan, 719 N.E.2d 756 (Ill. 1999)

- b. Assigning Too Many Patients, Jones v. Chicago HMO Ltd., 730 N.E.2d 1119 (Ill. 2000)
- c. Failure to Disclose Physician Incentives, Neade v. Portes, 739 N.E.2d 496 (Ill. 2000)

Week 7

Managed Care and ERISA

- a. Introduction to ERISA, pp. 371-383 (at bottom)
- b. Independent Review Laws, Rush Prudential HMO v. Moran, 536 U.S. 355 (2002)
- c. Any Willing Provider Laws, pp. 398 (at n. 3) – 401 (at bottom)
- d. Treatment Decisions, Pegram v. Herdrich, 530 U.S. 211 (2000)
- e. Tort Claims, pp. 987-997

Part III – Regulation of Practitioners and Providers

Week 8

Class 1. For-Profit and Non-Profit Providers

- a. Are For-Profits Different from Non-Profits? (no reading)
- b. Federal tax Issues, pp. 1024-1033 (at top); IRS Gen. Counsel Mem. 39862 (1991)
- c. Joint Ventures between Non-Profits and For-Profits, pp. 1095-1103
- d. Conversion of Non-profits to For-profits (no reading)
- e. Should hospitals and other health care providers qualify for state tax exemptions, Community Health Care v. Ill. Dept. of Rev., 859 N.E. 2d 1196 (Ill. App. 2006)

Class 2. Expansion of Providers and Corporate Practice

- a. Corporate Practice Issues, Berlin v. Sarah Bush Lincoln Health Center, 688 N.E.2d 106 (Ill. 1997)
- b. Certificate of Need, pp. 877-879
- c. Hospital Mergers, HCA v. FTC, 807 F.2d 1381 (7th Cir. 1986)

Week 9

Class 1. Professionalism, Licensure, Credentialing, and Turf Battles of Practitioners

- a. The Basis for Self-Regulation (no reading)
- b. The Professional Ethic v. The Commercial Ethic, Association for Molecular Pathology v. Myriad Genetics, 133 S.Ct. 2107 (2013)
- c. Licensure, Petrie v. Va. Bd. of Medicine, 2016 WL 2851166 (2016)
- d. Credentialing and the HCQIA, pp. 805-807

Class 2. Hospital – Practitioner Relations

- a. Judicial Review of Credentialing Decisions, pp. 842-848; Potvin v. Metropolitan Life, 997 P.2d 1153 (Cal. 2000)
- b. Exclusive Contracts, (no reading)
- c. Antitrust Challenges to Credentialing Decisions and the HCQIA, pp. 828-839
- d. Labor Law Issues, NLRB v. Kentucky River Comm Care, 121 S.Ct. 1861 (2001); discussion of employment status of medical residents

Week 10

Class 1. Payor Provider Relations

- a. The Power of Purchasers, pp. 1241-1245; 1248 (at bottom) – 1253
- b. Most-Favored-Nations Clauses, pp. 1280 (at bottom) – 1282
- c. Physician Opposition to Payors, U.S. v. Alston, 974 F.2d 1206 (9th Cir. 1992)

Class 2. Integrated Care

- a. Physician Networks, pp. 1285-1295, 1301 (at n. 4) – 1306
- b. Integrated Delivery Systems, Blue Cross v. Marshfield Clinic, 65 F.3d 1406 (7th Cir. 1996)